

## **Part 12**

### **Dissolution**

#### **16-16-1201 Dissolution and winding up.**

A limited cooperative association is dissolved only as provided in this part and upon dissolution winds up in accordance with this part.

Enacted by Chapter 363, 2008 General Session

#### **16-16-1202 Nonjudicial dissolution.**

Except as otherwise provided in Sections 16-16-1203 and 16-16-1211, a limited cooperative association is dissolved and its activities shall be wound up:

- (1) upon the occurrence of an event or at a time specified in the articles of organization;
- (2) upon the action of the association's organizers, board of directors, or members under Section 16-16-1204 or 16-16-1205; or
- (3) 90 days after the dissociation of a member, which results in the association having one patron member and no other members, unless the association:
  - (a) has a sole member that is a cooperative; or
  - (b) not later than the end of the 90-day period, admits at least one member in accordance with the organic rules and has at least two members, at least one of which is a patron member.

Amended by Chapter 378, 2010 General Session

#### **16-16-1203 Judicial dissolution.**

The district court may dissolve a limited cooperative association or order any action that under the circumstances is appropriate and equitable:

- (1) in a proceeding initiated by the attorney general, if:
  - (a) the association obtained its articles of organization through fraud; or
  - (b) the association has continued to exceed or abuse the authority conferred upon it by law; or
- (2) in a proceeding initiated by a member, if:
  - (a) the directors are deadlocked in the management of the association's affairs, the members are unable to break the deadlock, and irreparable injury to the association is occurring or is threatened because of the deadlock;
  - (b) the directors or those in control of the association have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
  - (c) the members are deadlocked in voting power and have failed to elect successors to directors whose terms have expired for two consecutive periods during which annual members meetings were held or were to be held; or
  - (d) the assets of the association are being misapplied or wasted.

Enacted by Chapter 363, 2008 General Session

#### **16-16-1204 Voluntary dissolution before commencement of activity.**

A majority of the organizers or initial directors of a limited cooperative association that has not yet begun business activity or the conduct of its affairs may dissolve the association.

Enacted by Chapter 363, 2008 General Session

**16-16-1205 Voluntary dissolution by the board and members.**

- (1) Except as otherwise provided in Section 16-16-1204, for a limited cooperative association to voluntarily dissolve:
  - (a) a resolution to dissolve shall be approved by a majority vote of the board of directors unless a greater percentage is required by the organic rules;
  - (b) the board of directors shall call a members meeting to consider the resolution, to be held not later than 90 days after adoption of the resolution; and
  - (c) the board of directors shall mail or otherwise transmit or deliver to each member in a record that complies with Section 16-16-508:
    - (i) the resolution required by Subsection (1)(a);
    - (ii) a recommendation that the members vote in favor of the resolution or, if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis of that determination; and
    - (iii) notice of the members meeting, which shall be given in the same manner as notice of a special meeting of members.
- (2) Subject to Subsection (3), a resolution to dissolve shall be approved by:
  - (a) at least two-thirds of the voting power of members present at a members meeting called under Subsection (1)(b); and
  - (b) if the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage.
- (3) The organic rules may require that the percentage of votes under Subsection (2)(a) is:
  - (a) a different percentage that is not less than a majority of members voting at the meeting;
  - (b) measured against the voting power of all members; or
  - (c) a combination of Subsections (3)(a) and (b).

Amended by Chapter 378, 2010 General Session

**16-16-1206 Winding up.**

- (1) A limited cooperative association continues after dissolution only for purposes of winding up its activities.
- (2) In winding up a limited cooperative association's activities, the board of directors shall cause the association to:
  - (a) discharge its liabilities, settle and close its activities, and marshal and distribute its assets;
  - (b) preserve the association or its property as a going concern for no more than a reasonable time;
  - (c) prosecute and defend actions and proceedings;
  - (d) transfer association property; and
  - (e) perform other necessary acts.
- (3) After dissolution and upon application of a limited cooperative association, a member, or a holder of financial rights, the district court may order judicial supervision of the winding up of the association, including the appointment of a person to wind up the association's activities, if:
  - (a) after a reasonable time, the association has not wound up its activities; or
  - (b) the applicant establishes other good cause.
- (4) If a person is appointed pursuant to Subsection (3) to wind up the activities of a limited cooperative association, the association shall promptly deliver to the division for filing an amendment to the articles of organization to reflect the appointment.

Enacted by Chapter 363, 2008 General Session

**16-16-1207 Distribution of assets in winding up limited cooperative association.**

- (1) In winding up a limited cooperative association's business, the association shall apply its assets to discharge its obligations to creditors, including members that are creditors. The association shall apply any remaining assets to pay in money the net amount distributable to members in accordance with their right to distributions under Subsection (2).
- (2) Unless the organic rules otherwise provide, in this Subsection (2) "financial interests" means the amounts recorded in the names of members in the records of a limited cooperative association at the time a distribution is made, including amounts paid to become a member, amounts allocated but not distributed to members, and amounts of distributions authorized but not yet paid to members. Unless the organic rules otherwise provide, each member is entitled to a distribution from the association of any remaining assets in the proportion of the member's financial interests to the total financial interests of the members after all other obligations are satisfied.

Enacted by Chapter 363, 2008 General Session

**16-16-1208 Known claims against dissolved limited cooperative association.**

- (1) Subject to Subsection (4), a dissolved limited cooperative association may dispose of the known claims against it by following the procedure in Subsections (2) and (3).
- (2) A dissolved limited cooperative association may notify its known claimants of the dissolution in a record. The notice shall:
  - (a) specify that a claim be in a record;
  - (b) specify the information required to be included in the claim;
  - (c) provide an address to which the claim shall be sent;
  - (d) state the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant; and
  - (e) state that the claim will be barred if not received by the deadline.
- (3) A claim against a dissolved limited cooperative association is barred if the requirements of Subsection (2) are met, and:
  - (a) the association is not notified of the claimant's claim, in a record, by the deadline specified in the notice under Subsection (2)(d);
  - (b) in the case of a claim that is timely received but rejected by the association, the claimant does not commence an action to enforce the claim against the association not later than 90 days after receipt of the notice of the rejection; or
  - (c) if a claim is timely received but is neither accepted nor rejected by the association not later than 120 days after the deadline for receipt of claims, the claimant does not commence an action to enforce the claim against the association:
    - (i) after the 120-day period; and
    - (ii) not later than 90 days after the 120-day period.
- (4) This section does not apply to a claim based on an event occurring after the date of dissolution or a liability that is contingent on that date.

Amended by Chapter 378, 2010 General Session

**16-16-1209 Other claims against dissolved limited cooperative association.**

- (1) A dissolved limited cooperative association may publish notice of its dissolution and request persons having claims against the association to present them in accordance with the notice.
- (2) A notice under Subsection (1) shall:
  - (a) be published:
    - (i) at least once in a newspaper of general circulation in the county in which the dissolved limited cooperative association's principal office is located or, if the association does not have a principal office in this state, in the county in which the association's designated office is or was last located; and
    - (ii) as required in Section 45-1-101;
  - (b) describe the information required to be contained in a claim and provide an address to which the claim is to be sent; and
  - (c) state that a claim against the association is barred unless an action to enforce the claim is commenced not later than three years after publication of the notice.
- (3) If a dissolved limited cooperative association publishes a notice in accordance with Subsection (2), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim not later than three years after the first publication date of the notice:
  - (a) a claimant that is entitled to but did not receive notice in a record under Section 16-16-1208; and
  - (b) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
- (4) A claim not barred under this section may be enforced:
  - (a) against a dissolved limited cooperative association, to the extent of its undistributed assets; or
  - (b) if the association's assets have been distributed in connection with winding up the association's activities against a member or holder of financial rights to the extent of that person's proportionate share of the claim or the association's assets distributed to the person in connection with the winding up, whichever is less. The person's total liability for all claims under this Subsection (4) may not exceed the total amount of assets distributed to the person as part of the winding up of the association.

Amended by Chapter 378, 2010 General Session

**16-16-1210 Court proceeding.**

- (1) Upon application by a dissolved limited cooperative association that has published a notice under Section 16-16-1209, the district court in the county where the association's principal office is located or, if the association does not have a principal office in this state where its designated office in this state is located, may determine the amount and form of security to be provided for payment of claims against the association that are contingent, have not been made known to the association, or are based on an event occurring after the effective date of dissolution but that, based on the facts known to the association, are reasonably anticipated to arise after the effective date of dissolution.
- (2) Not later than 10 days after filing an application under Subsection (1), a dissolved limited cooperative association shall give notice of the proceeding to each known claimant holding a contingent claim.
- (3) The court may appoint a representative in a proceeding brought under this section to represent all claimants whose identities are unknown. The dissolved limited cooperative association shall pay reasonable fees and expenses of the representative, including all reasonable attorney and expert witness fees.

- (4) Provision by the dissolved limited cooperative association for security in the amount and the form ordered by the court satisfies the association's obligations with respect to claims that are contingent, have not been made known to the association, or are based on an event occurring after the effective date of dissolution, and the claims may not be enforced against a member that received a distribution.

Enacted by Chapter 363, 2008 General Session

**16-16-1211 Administrative dissolution.**

- (1) The division may dissolve a limited cooperative association administratively if the association does not:
  - (a) pay, not later than 60 days after the due date, any fee, tax, or penalty due to the division under this chapter or other law; or
  - (b) deliver not later than 60 days after the due date its annual report to the division.
- (2) If the division determines that a ground exists for dissolving a limited cooperative association administratively, the division shall file a record of the determination and serve the association with a copy of the record.
- (3) If, not later than 60 days after service of a copy of the division's determination under Subsection (2), the association does not correct each ground for dissolution or demonstrate to the satisfaction of the division that each uncorrected ground determined by the division does not exist, the division shall dissolve the association administratively by preparing and filing a declaration of dissolution which states the grounds for dissolution. The division shall serve the association with a copy of the declaration.
- (4) A limited cooperative association that has been dissolved administratively continues its existence only for purposes of winding up its activities.
- (5) The administrative dissolution of a limited cooperative association does not terminate the authority of its agent for service of process.

Enacted by Chapter 363, 2008 General Session

**16-16-1212 Reinstatement following administrative dissolution.**

- (1) A limited cooperative association that has been dissolved administratively may apply to the division for reinstatement not later than two years after the effective date of dissolution. The application shall be delivered to the division for filing and state:
  - (a) the name of the association and the effective date of its administrative dissolution;
  - (b) that the grounds for dissolution either did not exist or have been eliminated; and
  - (c) that the association's name satisfies the requirements of Section 16-16-111.
- (2) If the division determines that an application contains the information required by Subsection (1) and that the information is correct, the division shall:
  - (a) prepare a declaration of reinstatement;
  - (b) file the original of the declaration; and
  - (c) serve a copy of the declaration on the association.
- (3) When reinstatement under this section becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the limited cooperative association may resume or continue its activities as if the administrative dissolution had not occurred.

Amended by Chapter 378, 2010 General Session

**16-16-1213 Denial of reinstatement -- Appeal.**

- (1) If the division denies a limited cooperative association's application for reinstatement following administrative dissolution, the division shall prepare and file a notice that explains the reason for denial and serve the association with a copy of the notice.
- (2) Not later than 30 days after service of a notice of denial of reinstatement by the division, a limited cooperative association may appeal the denial by petitioning the district court to set aside the dissolution. The petition shall be served on the division and contain a copy of the division's declaration of dissolution, the association's application for reinstatement, and the division's notice of denial.
- (3) The court may summarily order the division to reinstate the dissolved cooperative association or may take other action the court considers appropriate.

Amended by Chapter 378, 2010 General Session

**16-16-1214 Statement of dissolution.**

- (1) A limited cooperative association that has dissolved or is about to dissolve may deliver to the division for filing a statement of dissolution that states:
  - (a) the name of the association;
  - (b) the date the association dissolved or will dissolve; and
  - (c) any other information the association considers relevant.
- (2) A person has notice of a limited cooperative association's dissolution on the later of:
  - (a) 90 days after a statement of dissolution is filed; or
  - (b) the effective date stated in the statement of dissolution.

Enacted by Chapter 363, 2008 General Session

**16-16-1215 Statement of termination.**

- (1) A dissolved limited cooperative association that has completed winding up may deliver to the division for filing a statement of termination that states:
  - (a) the name of the association;
  - (b) the date of filing of its initial articles of organization; and
  - (c) that the association is terminated.
- (2) The filing of a statement of termination does not itself terminate the limited cooperative association.

Enacted by Chapter 363, 2008 General Session